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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 942

MARION H. ALLEN, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

THE FIRST NATIONAL BANK & TRUST COMPANY IN MACON, AS EXECUTOR UNDER THE LAST WILL AND TESTAMENT OF MRS. FLORETTA S. ULMAN (MRS. E. ULMAN), DECEASED

BRIEF FOR RESPONDENT OPPOSING THE GRANT OF THE WRIT OF CERTIORARI

The claim of the Commissioner that to treat a bona fide sale by a life tenant of his life estate as a sale of a capital asset opens up tax avoidance possibilities is spurious.

There can be no tax avoidance when only the gain arising from the sale of the life estate is taxed. The income arising from those proceeds is taxable, and upon the death of the life tenant the amount received from the sale of the life estate becomes part of the estate of the decedent subject to be taxed while the life estate would not.

Possibly the Commissioner is thinking about partial assignments by a life tenant of the income for short periods of time, but most emphatically that is not the

case at bar. The sale here was at arm's length, absolute and irrevocable, of the life tenant's entire interest.

To tax the entire proceeds derived from the sale of the life estate as ordinary income is double taxation—a tax on the gain and another tax on the return of the capital—and to treat these proceeds as ordinary income under the guise that such proceeds constitute the anticipation of income is a fraud upon the 16th amendment to the Constitution.

The assertion so assiduously made that the proceeds derived from the sale of a life estate is no more than a substitute for future payments is shocking to one's conceptions of realities.

On occasions this Court has found it necessary to ignore some of the common law niceties with respect to conveyances and estates. But never has any doubt been cast upon the verity of a life estate.

> See *Helvering v. Hallock*, 309 U. S. 106, p. 117-118.

Therefore, it is no accident that Congress, the Commissioner and the courts have treated a life estate as a capital asset and that there can be no income from the sale thereof until the basis of the life estate is returned.

There is no difference in the income received from a life estate and the income from a fee simple estate. And why should there be a difference in the proceeds derived from the sale of a life estate and the sale of a fee simple estate.

In the Gavit case, relied on so strongly by the Commissioner, Justice Holmes made it perfectly clear that it

was the income which was taxable and not the corpus which produced the income.

The Blair case, which the Commissioner treats lightly, completely settles the issue.

> "The will creating the trust entitled the petitioner during his life to the net income of the property held in trust. He thus became the owner of an equitable interest in the corpus of the property . . . The interest was present property alienable like any other, in the absence of a valid restraint upon alienation."
>
> *Blair v. Commissioner*, 300 U. S. 5 (6), p. 13.

In the Schaffner case, 312 U. S. 579, Chief Justice Stone reaffirmed this doctrine, saying:

> "Nor are we troubled by the logical difficulties of drawing the line between a gift of an equitable interest in property for life effected by a gift for life of a share of the income of the trust and the gift of the income or a part of it for the period of a year as in this case." (p. 583)

Any other treatment of the proceeds arising from the absolute sale of a life estate would destroy our historical concept of property.

When one sells a life estate the seller has parted with the title to his estate. He has not received income—he has received the proceeds from the sale of property.

The Hort case is not at all in point. There wasn't the slightest characteristic of a sale or transfer in that

transaction. It was nothing more than an amicable adjustment of the breach of a contract. It is the same transaction as where A contracts to buy from B six months hence 1,000 bales of cotton at ten cents per pound, but when the time for delivery arrives, cotton being five cents per pound, A pays B $10,000 to be released from his contract. There is not present any element of a genuine sale in such a transaction. The true effect of what is done is the settlement of a contract—nothing more and nothing less. And that is all there was in the Hort case.

But that is not what happens when a life tenant or life beneficiary makes a genuine sale of her life estate.

Finally, the position of the Commissioner is not only inconsistent with the statute and the decisions of this Court but is inconsistent with his own previous position. In the case of *Harman v. Commissioner*, 4 T. C. 335, the Tax Court said:

> "The first issue presented for decision is the right of each of the petitioners to deduct from their income . . . the amount of a loss incurred upon the sale of certain coal lands which they inherited for life under the will of their father. This issue suggests the following questions: (1) Was the loss that of the individual taxpayers or that of the estate of W. F. Harman? (2) What is the amount of the loss? (3) Is the loss capital or ordinary?"

The Tax Court, on page 347, held:

> "Therefore, we hold that petitioners' life estates in these coal lands are capital assets."

The Commissioner acquiesced in this decision. (1945 I.R.B., p. 3)

In conclusion, respondent avers that the contention of the Commissioner is unconscionable. The Government can suffer no prejudice by taxing only the gain on the sale of the capital asset in that the income derived from the proceeds of the sale of the life estate will, in the end, produce the same identical revenue for the Government as the life estate and the transmission of the fee simple estate by gift or death will likewise be taxable. That ought to be enough.

Respectfully submitted,

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